

Appl. No. 10/724,839
Docket No. P-147
Amtd. dated October 8, 2010
Reply to Office Action mailed on July 6, 2010
Customer No. 27752

REMARKS

Claims 32, 34, 42, 47 and 55 are pending in the application.

With this Response, independent claim 32 has been amended. Support for this amendment can be found on page 7, lines 8-14 of the specification as filed. No new matter has been added. Consequently, entry of this amendment is in order and is respectfully requested.

The Abstract was objected to based on it containing more than one paragraph. Applicants have amended the Specification such that the Abstract now only contains one paragraph. Reconsideration is respectfully requested.

Applicants thank the examiner for finding the previous submission persuasive over Heisey and Anantharaman. However, the following new grounds of rejection are introduced.

Rejection Under 35 U.S.C. § 103 Over Baillon

Claims 32, 34, 42, 47, and 55 have been rejected under 35 U.S.C. § 103 as being unpatentable over Baillon et al. (US Publication No. 2003/0195166) in view of previously cited Kaplan. Applicants respectfully traverse this rejection. However, in an effort to advance prosecution, and without conceding to the basis and/or merit of the rejection, independent claim 32 has been amended. Independent claim 32 now recites, *inter alia*, wherein the companion animal composition wherein the animal composition comprises calcium at less than about 1%, by weight of the composition. Thus, for the reasons that follow, Applicants respectfully request reconsideration and withdrawal of the rejection.

Baillon disclosed an invention relating to the use of a non-digestible carbohydrate in the manufacture of a composition for treatment or preventing pathogenic bacteria in the large intestine of a pet animal. See Abstract. The non-digestible carbohydrate includes FOS. See paragraph 14. Importantly, Baillon fails to disclose, teach, or suggest a animal food composition that is a nutritionally balanced kibble comprised of the ingredients has now amended, specifically the animal food composition comprising calcium at less than about 1%, as independent claim 32 has now been recited to include. Therefore, Baillon alone does not teach each and every element of independent claim 32.

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The Kaplan reference does not remedy the deficiency of Baillon. Kaplan is used for the disclosure of a study of the bacterial fermentation properties of a commercial FOS mixture. It does not relate to adding calcium to an animal food composition.

Accordingly, Applicants submit that Baillon in view of Kaplan cannot support a proper 35 USC 103 rejection since the claim element of calcium is not disclosed, taught, or suggested by the references. In sum, Baillon in view of Kaplan fails to disclose the requisite composition as recited in independent claim 32. Since the dependent claims necessary include the limitations of independent claim 32, the reasons above particularly apply to those claims as well. Reconsideration and withdrawal of the rejection are respectfully requested.

CONCLUSION

This Response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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